deemed to be ''near the close'' would depend on the degree of risk that could reasonably be attributed to the position established by that trade, versus the reasonably anticipated impact the trade at the close would have on the closing price. Generally, however, trades executed after 3:40 p.m. would be considered to be ''near the close.'' The Memorandum notes that the member organization would not be precluded from executing the customer's order on an agency basis at any time, including at or near the close, but cautions that this would not preclude the Exchange from determining that such activity might be a violation of the anti-manipulation provisions of the Act or Exchange rules.

The Memorandum also restates that the Exchange would deem conduct to be inconsistent with just and equitable principles of trade where a member organization effects any transactions in a stock, knowing of the imminent execution of a block, in order subsequently to liquidate the position by participating on the contra-side of the block transaction. The Memorandum also provides that a person should not disclose to any other person trading strategies or customers' orders for the purpose of that person taking advantage of the information for his or her personal benefit or for the benefit of a member organization.

The Memorandum notes, however, that this would not preclude a member organization from soliciting interest to trade with the contra-side of a block in the normal course of engaging in block facilitation activities.

Finally, the Memorandum reminds the Exchange's membership that they are required to establish and maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws. It also states that member organizations must ensure that trading strategies engaged in by their proprietary traders to facilitate customers' orders have an economic basis and are not engaged in to mark the close or to mark the value of a position and that before any at-the-close customer orders are transmitted to the Floor, member organizations accepting such orders must exercise due diligence to learn the essential facts relative to these orders.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed Information Memorandum is consistent with these objectives in that it enhances the Exchange's efforts to educate its membership about practices that the Exchange believes are inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By no later than February 27, 1995, or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–45 and should be submitted by February 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1566 Filed 1–20–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders and to assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW, Suite 925, Washington, DC 20004: telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about

the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90–12/31/90 ...	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ...	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ...	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ...	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.

Due to administrative oversight, the third quarter index for 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not prepared and published. As a consequence, the information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders, will be included in this publication of the index.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be noncumulative. Consequently, this publication includes the cumulative order number index for all decisions and orders issued during 1994.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

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(This index includes all decisions and orders issued by the Administrator from July 1, 1994 to December 31, 1994.)

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94–3 Valley Air Services
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94–4 Northwest Aircraft Rental
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94–5 Meritt A. Grant
3/10/94 CP92SO0471
94–6 Raymond B. Strohl
3/10/94 CP93GL0046
94–7 Eric W. Hereth
3/10/94 CP92WP0444
94–8 Raul Nunez
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94–9 B&G Instruments
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94–10 John G. Boyle
3/29/94 CP93SO0060
94–11 Pan American Airways
4/21/94 CP89WP0229, CP89SO0232, CP89SO0239, CP89SO0240
94–12 David Bartusiak
4/28/94 CP93WP0042
94–13 John G. Boyle
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94–14 B&G Instruments
6/9/94 CP93SO0028
94–15 Anthony Columna
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94–16 Martha Phyllis Ford
6/15/94 CP93SO0244
94–17 TCI Corp.
6/22/94 88–25(HM)
94–18 Phyllis Jones Luxemburg
6/22/94 CP93SO0105
94–19 Pony Express Courier Corp.
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94–20 Conquest Helicopters
6/22/94 CP92NM0500
94–21 Mark L. Sweeney
6/22/94 CP91NM0430
94–22 Jimmy Lee Harkins
6/22/94 CP93AL0214
94–23 Ezequiel Perez
6/27/94 CP93SO0374
94–24 Todd M. Page
6/29/94 CP92NM0486
94–25 Janet Myers
8/23/94 CP94SW0053
94–26 French Aircraft Agency
8/24/94 CP92SO0482
94–27 Michael R. Larsen
9/30/94 CP93NM0024
94–28 Toyota Motor Sales
9/30/94 CP93SO0269
94–29 Robert Sutton
9/30/94 CP93EA0370
94–30 Anthony Columna
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94–31 Scott Smalling
10/5/94 CP93NM0260
94–32 Detroit Metropolitan Wayne County Airport
10/5/94 CP94GL0032
94–33 Trans World Airlines
10/13/94 CP90GL0085, CP90CE0110, CP90CE0114, CP90CE0134
94–34 American International Airways
11/29/94 CP93EA0051
94–35 American International Airways
11/29/94 CP93WP0296
94–36 American International Airways
11/29/94 CP93GL0053
94–37 Ray Houston
12/9/94 (no docket number)
94–38 Lee Philip Bohan
12/9/94 CP93SO0092
94–39 Boris Kirola
12/9/94 CP94EU0048, CP94EU0051
94–40 Polynesian Airways
12/9/94 CP91WP0455
94–41 Dewey E. Tower
12/16/94 CP93CE00389, CP93CE0390, CP93CE0391
94–42 Francis Taylor
12/16/94 CP94GL0086
94–43 Ezequiel G. Perez
12/20/94 CP93SO0374
94–44 American Airlines
12/20/94 CP93SO0286

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index

[Current as of December 31, 1994]

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index—Continued

[Current as of December 31, 1994]

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index—Continued

[Current as of December 31, 1994]

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index—Continued

[Current as of December 31, 1994]

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index—Continued

[Current as of December 31, 1994]

Civil Penalty Actions—Orders Issued by the Administrator—Subject Matter Index—Continued

[Current as of December 31, 1994]

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13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bergen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–45 O'Brien; 92–52 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir; 92–69 McCabe; 92–72 Giuffrida; 92–74 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B & G Instruments; 94–10 Boyle 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page; 94–26 French Aircraft; 94–28 Toyota.
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14.05	90–17 Wilson.
14.20	91–52 KDS Aviation.
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25.855	92–37 Giuffrida.
39.3	92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
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43.9	91–8 Watts Agricultural Aviation.
43.13	90–11 Thunderbird Accessories; 94–3 Valley Air; 94–38 Bohan.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse.
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65.92	92–73 Wyatt.
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91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton.
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557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.

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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(From July 1 to December 31, 1994)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1994 to December 31, 1994.

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Janet Myers

Order No. 94–25 (8/23/94)

Appeal Dismissed. Respondent failed to perfect her appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of French Aircraft Agency

Order No. 94–26 (8/24/94)

Appeal Dismissed. Respondent failed to perfect its appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of Michael R. Larsen

Order No. 94–27 (9/30/94)

Motion To Dismiss the Hearing Request. Complainant properly filed a motion to dismiss Respondent's hearing request for untimeliness, instead of a complaint, under the Rules of Practice. The law judge erred in finding that Complainant had no jurisdictional basis for filing the motion to dismiss the hearing request. The general applicability section of the Rules of Practice should be interpreted in the context of the entire subpart.

In the Matter of Toyota Motor Sales, USA, Inc.

Order No. 94–28 (9/30/94)

Civil Penalty Increased. In this hazardous materials case involving air shipment of acid-filled batteries, the law judge committed several errors in his analysis that led him to impose a sanction that was too low. The penalty is increased from $10,000 to $50,000.

Standard for ALJ Reduction of Civil Penalty. Complainant argued in its brief that law judges should reduce the proposed civil penalty only if clear and compelling mitigating circumstances, not made known to Complainant prior to the hearing, exist. This argument is rejected. Under the Rules of Practice, the agency attorney bears the burden of proving the agency's case, including the appropriate amount of the civil penalty. When sanction is an issue, the law judge is expected to give a reasoned explanation of the amount of civil penalty selected, whether or not the penalty is reduced.

Corrective Action. Respondent's decision to stop shipping batteries did not constitute corrective action justifying a lower civil penalty. The type of corrective action that warrants a significant reduction in the civil penalty is action to ensure that hazardous materials will be handled by the respondent in compliance with the regulations in the future—*e.g.*, sending employees to hazardous materials training.

In the Matter of Robert Lee Sutton

Order No. 94–29 (9/30/94)

Failure To File Answer. Respondent raises the possibility that he may have been misled in his discussions with the agency attorney. If communications between Respondent and the agency attorney led Respondent reasonably, but incorrectly, to believe that submitting a settlement proposal was a valid substitute for filing an answer, then in the interest of fairness, good cause may be found and Respondent should be permitted to file an answer. Complainant is directed to provide an additional brief addressing whether Respondent may have been misled by Complainant's words or actions.

In the Matter of Anthony F. Columna

Order No. 94–30 (9/30/94)

Good Cause To Excuse Late Filing of Answer. A statement in the law judge's notice of hearing may have inadvertently misled Respondent, causing him to believe that he could mail his answer after the deadline as long as he provided some explanation for doing so. Good cause has been shown. The order canceling the hearing and assessing the $1,000 civil penalty is vacated, and the case is remanded to the law judge for a hearing.

In the Matter of Scott H. Smalling

Order No. 94–31 (10/5/94)

''Knowing'' Violation of Hazardous Materials Law. Respondent argues that he could not have violated the hazardous materials regulations ''knowingly,'' within the meaning of the Hazardous Materials Transportation Act, because he did not know that the firecrackers in his baggage were hazardous materials and that what he did was wrong. Congress intended to prevent individuals from relying on ignorance of the law as an excuse in civil hazardous materials cases. In this context—a civil case in which specific intent to violate the regulations need not be shown—lack of knowledge of the law is irrelevant. The law judge's decision assessing a $1,250 civil penalty is affirmed.

In the Matter of Detroit Metropolitan Wayne County Airport

Order No. 94–32 (10/5/94)

Interlocutory Appeal Premature. Complainant appealed from actions contemplated by the law judge in an order to show cause. However, none of the possible actions mentioned by the law judge in the order to show cause have yet occurred. Complainant's interlocutory appeal of right is not ripe for review and is dismissed.

Obstreperous or Disruptive Behavior. The meager record to date in this case—two written responses to discovery orders—does not demonstrate conduct by agency counsel that appears to rise to the level of obstreperous or disruptive behavior.

In the Matter of Trans World Airlines, Inc.

Order No. 94–33 (10/13/94)

Appeal Dismissed. Complainant withdrew its notice of appeal, and as a result, its appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94–34 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94–35 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94–36 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR

13.233(c). Respondent's appeal is dismissed.

In the Matter of Ray Houston

Order No. 94–37 (12/9/94)

Request for Hearing. Respondent is the principal officer of Johnson County Aerial Services. Civil penalty action was taken against Respondent and against Johnson County Aerial Services. Respondent did not send a request for hearing with the case number assigned to his case. An order assessing civil penalty was issued by Complainant. Respondent did send a request for hearing that he signed, using the case number assigned to the Johnson County Aerial Services case. Respondent wrote to the law judge, requesting that his case be consolidated with the Johnson County Aerial Services case. He explained that he intended the request for hearing to serve as a request for hearing in both cases. The law judge forwarded Respondent's request to the FAA Decisionmaker.

The matter is remanded to the law judge to determine whether it was reasonable for Respondent to think that the request for hearing that he submitted was a request in both cases, and if so, whether the request for hearing was timely in Respondent's case or whether there is good cause to excuse the untimeliness of the request for hearing.

Jurisdiction of Law Judges. The agency attorney argues that an untimely request for hearing and the issuance of an order assessing civil penalty divest the law judge and the Administrator of jurisdiction. The law judge has jurisdiction to determine whether a request for hearing was late-filed, and therefore, whether the agency attorney issued an order assessing civil penalty in accordance with 14 CFR 13.16(b)(2).

In the Matter of Lee Philip Bohan

Order No. 94–38 (12/9/94)

Minimum Equipment List (MEL). At the time of the incident giving rise to this case, the Delta Boeing 737 MEL specifically permitted the deferral of maintenance of a broken forward observer seat. In contrast, the MEL at the time made no mention of equipment associated with the forward observer seat, such as the oxygen mask. The Delta Boeing 737 MEL was later amended to specifically permit deferral of the forward observer seat and its associated equipment. Prior to the incident, the FAA had informed Delta that the MEL at that time did not permit deferral of maintenance of broken equipment associated with the forward observer seat.

A comparison of the Delta MEL in effect on the day of the incident, which did not expressly defer associated equipment, and the subsequent MEL, which did permit deferral of associated equipment, supports the law judge's findings that the former MEL did not authorize deferral. Moreover, assuming for this decision only that Respondent had the authority to interpret a MEL provision as meaning more than its plain language, Respondent should have realized that this MEL provision did not include the oxygen mask and should have checked further before deferring maintenance on the oxygen mask.

Maintenance. Respondent, a maintenance coordinator in Atlanta, argued that he did not perform maintenance, as that term is used in 14 CFR 43.13(a), when he authorized the deferral of maintenance on the broken forward observer oxygen mask on the aircraft which was then in Kansas City. It is held that Respondent did perform maintenance because he authorized the non-repair or non-replacement of the broken oxygen mask. Respondent performed maintenance contrary to the methods, techniques, and practices acceptable to the Administrator when he authorized the non-repair or non-replacement of the broken oxygen mask. To hold otherwise would be to narrowly restrict Section 43.13(a) to the mechanic or inspector in physical contact with the aircraft although the important maintenance decisions, including the decision not to perform maintenance, are made by supervisors or other officials with corresponding authority.

In the Matter of Boris Kirola

Order No. 94–39 (12/9/94)

Complainant appealed from the ALJ's order denying reconsideration of his order finding that the agency attorney and Assistant Chief Counsel engaged in obstreperous or disruptive behavior. After Complainant withdrew the complaints giving rise to this case, the law judge issued the order finding that the agency attorney had engaged in obstreperous or disruptive behavior by refusing to comply with the law judge's order to list specific civil penalty amounts for each alleged violation and for failing to reply to the order to show cause. The law judge denied reconsideration and found that the Assistant Chief Counsel also engaged in obstreperous or disruptive behavior for failing to respond to an order. The next day, the law judge dismissed the cases.

Jurisdiction of ALJ after Withdrawal of Complaints. Once the complaints were withdrawn, the law judge lacked the authority to issue the orders. The express sanction for obstreperous or disruptive behavior under 14 CFR 13.205(b) is for the law judge to bar the individual from the proceedings. In this case, since the complaints had been withdrawn, the question of barring the attorneys from the proceeding was moot.

Administrative law judges in FAA civil penalty actions do not retain jurisdiction to decide collateral matters after the complaints have been withdrawn.

Obstreperous or Disruptive Conduct. Finally, agency counsel were not obstreperous or disruptive. The case had not yet reached the hearing stage. The law judge's findings of obstreperous and disruptive behavior were based solely on two written responses by Complainant's counsel to discovery orders and on the failure of Complainant's counsel and Assistant Chief Counsel to respond to two orders.

In the Matter of Polynesian Airways, Inc.

Order No. 94–40 (12/9/94)

Weight of Aircraft. Respondent, a Part 135 operator, weighted its aircraft in August 1898, and brought it to a certificated repair station to be reweighed in January, 1990. The weight determined by the 1990 weighing was 244 pounds heavier than that from the August 1989 weighing. Respondent's owner testified that he knew that the aircraft had gained weight and that the August 1989 weighing was no longer reliable because of the installation of floorboards since August 1989. However, he testified, he thought the January 1990 weighing seemed ''too heavy.'' During an inspection on August 16, 1990, FAA inspectors found that Respondent's pilot had used the August 1989 weight to determine the weight and center of gravity of the aircraft on three flight for hire. Complainant alleged that Respondent had violated 14 CFR 135.185(a) and 135.63(c). The law judge dismissed the complaint, finding that Complainant had failed to prove violations of those regulations. Complainant appealed.

It is held that 14 CFR 135.185(a) does not provide that no person may operate a multiengine aircraft unless the current empty weight and center of gravity are calculated from the values established by the latest or the most recent actual weighing. Section 135.185(a) sets forth its own definition of the word ''current.'' According to that regulation, the values from an actual weighing may be used as long as that weighing occurred within the preceding 36 months.

The day of the flights in question, the empty weight and center of gravity had been calculated from values established by an actual weighing that had taken place approximately 12 months earlier. The law judge's finding that Respondent did not violate 14 CFR 135.185(a) is affirmed.

Load Manifests. It is held that Respondent violated 14 CFR 135.63(c), which makes the operator responsible for the accuracy of the load manifest. In meeting the requirements of Section 135.63(c), an operator cannot use an aircraft weight that he knows is inaccurate, even when the empty weight was established by an actual weighing done within the previous 36 months. It is undisputed that if the empty weight and center of gravity figures are wrong, then all of the calculations based thereon, such as the weight and balance for a loaded aircraft, likewise will be wrong.

Equal Protection. There is no merit to Respondent's argument that it is being treated differently than other similarly situated certificate holders who have the right to appeal to the National Transportation Safety Board under the FAA Civil Penalty Assessment Act of 1992. The provisions of that Act do not apply to violations such as the ones in this case that occurred prior to August 26, 1992.

Penalty. A $5000 civil penalty, as sought by Complainant is assessed even though it is found that only 14 CFR 135.63(c) was violated. A $5000 civil penalty is appropriate in light of the totality of the circumstances in this case: (1) The serious safety implications of flying without accurate weight and balance information; (2) Respondent's continued use of the August 1989 weighing despite the FAA inspectors efforts to help Respondent to come into compliance; (3) $5000 is well below the maximum allowable civil penalty.

In the Matter of Dewey E. Towner

Order No. 94–41 (12/16/94)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Francis Taylor

Order No. 94–42 (12/16/94)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Ezequiel G. Perez

Order No. 94–43 (12/20/94)

Requirement to File an Answer. The law judge had dismissed Respondent's request for hearing, finding that Respondent had not filed an answer. Respondent appealed and explained that he had sent an answer to the agency counsel in Orlando, Florida.

The Administrator finds that Complainant did not fully respond to Respondent's statement on appeal that he sent an answer to the agency attorney in Orlando. Complainant did not state that Respondent's answer was not received by the agency attorney in Orlando, who initiated the action. Complainant also did not state that no answer was received by agency counsel in the FAA Eastern Region, where the action was transferred for hearing. Agency counsel or the records custodian for agency counsel's office should have made all statements of fact pertaining to the non-receipt of Respondent's answer in an affidavit or declaration. Case is remanded to the law judge with instructions to hold a hearing on the issue of whether Respondent filed an answer and if not, whether, in light of Respondent's language difficulties, good cause exists to excuse the failure to file an answer.

In the Matter of American Airlines

Order No. 94–44 (12/20/94)

Sanction. The law judge found that Respondent had violated 14 CFR 108.5(a)(1) and 108.11(a) by permitting a passenger to board its aircraft with a loaded gun that remained accessible to the passenger during flight. Complainant sought a $10,000 civil penalty. The law judge reduced the civil penalty to $1000 based upon (1) the six-week delay between the incident and the date on which the FAA notified Respondent of the incident, and (2) the absence of any evidence regarding whether Respondent was solely responsible for the operation of the security screening checkpoint that failed to detect the loaded gun. On appeal, the Administrator rejects these two factors as valid grounds for reducing the civil penalty.

A six-week delay by the FAA in notifying an air carrier that an incident involving one of its passengers is under investigation is less than desirable but not *per se* unreasonable. More importantly, nowhere in the record did Respondent explain what it would have done differently to investigate this incident or to take corrective action had Respondent been notified sooner.

The fact that a passenger boarded and flew on Respondent's aircraft with a loaded gun in his accessible carry-on baggage was a failure by Respondent to carry out its security program. Respondent does not avoid its responsibility under its security program by suggesting, without any evidence to support it, that perhaps the passenger went through a security screening checkpoint that was operated by another carrier.

A $5000 civil penalty will adequately reflect the seriousness of the violations committed by Respondent and deter future violations by Respondent and others.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

AvLex, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483, is placing the decisions on CD–ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and GENIE.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following locations in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A,

Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 553–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 297–1270.

Issued in Washington, DC on January 17, 1995.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 95–1614 Filed 1–20–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Environmental Impact Statement for the Glen Burnie Light Rail Extension in Anne Arundel County, Maryland

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Mass Transit Administration (MTA) intend to undertake an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). MTA will ensure that the EIS also satisfies the requirements of the Maryland Environmental Policy Act (MEPA).

This effort will be performed in cooperation with the Anne Arundel County Office of Planning and Code Enforcement. Other key supporting agencies include the Anne Arundel County Department of Public Works and the Baltimore Metropolitan Council (BMC).

The Environmental Impact Statement will evaluate alternative light rail alignments in the corridor between the Central Light Rail Line's existing terminus, Cromwell Station, to the central business district (CBD) in Glen Burnie, MD and a parallel hiker/biker trail. In addition, the EIS will evaluate the No-Build alternative. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: Comment Due Date: Written comments on the scope of the alternative alignments and impacts to be considered should be sent to the MTA by February 27, 1995, See **ADDRESSES** below.

Scoping Meeting: The public scoping meeting will be held on Wednesday, January 25, 1995, between 3 p.m. and 9 p.m. at The Pascal Senior Center. See **ADDRESSES** below. People with special needs should contact Lisa Colletti at the address below or by calling (410) 333–3379. A TDD number is also available; (410) 539–3497. The building is accessible to people with disabilities. It is located within one mile of the Cromwell Light Rail Stop as well as transit stops for the 14, 17, and 18 bus lines.

ADDRESSES: Written comments on project scope should be sent to Mr. Anthony J. Brown, Project Manager, Maryland Mass Transit Administration, 300 West Lexington Street, Baltimore, MD 21201–3415. The Scoping Meeting will be held at the following location: The Pascal Senior Center, 125 Dorsey Road, Glen Burnie, Maryland, 21061. See **DATES** above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Shipman, Deputy Regional Administrator, Federal Transit Administration, Region III, 1760 Market St., Suite 500, Philadelphia, PA 19103 (215) 656–6900.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the MTA invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the public scoping meeting or in writing. See **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impact while achieving similar transit objectives.

Scoping materials will be available at the meeting or in advance of the meeting by contacting Lisa Colletti at the MTA as indicated above. The meeting will be held in an ''open-house'' format and project representatives will be available to discuss the project throughout the time period given. Informational displays and written materials will also be available throughout the time period given. In addition to written comments which may be made at the meeting or as described below, a stenographer will be available at the meeting to record comments.

II. Description of Study Area and Project Need

The study area is wholly within Anne Arundel County, MD. It is approximately three quarters of a mile long and connects the CBD of Glen Burnie, MD and the existing Central Light Rail Line terminus at Dorsey Road (MD 176) and Baltimore & Annapolis Boulevard (MD 648). The corridor also connects two commercial centers.